

Civil Action No.: 5:19-cv-438-FL

Defendant.

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capture of the YouTube webpage for the April 10, 2015 episode of *Good Mythical Morning*; (<https://web.archive.org/web/20160514203721/https://www.youtube.com/watch?v=NxoU2HrXzpU>);¹ Exhibit 3, which is a true and correct screen-print of the Variety article by Joe Otterson entitled, '*Late Show With Stephen Colbert*' Narrowly Tops Late-Night Ratings for 2018-2019 Season (<https://variety.com/2019/tv/news/late-show-with-stephen-colbert-ratings-2018-2019-1203223520/>);² and Exhibit 4, which is a true and correct screen-print of the results of a search using Public Access to Court Electronic Records (PACER) to obtain case and docket information from federal appellate, district, and bankruptcy courts for copyright infringement cases in which Masi is a plaintiff.

Each of the exhibits contains the kinds of facts that may be judicially noticed under Rule 201(b)(2) of the Federal Rules of Evidence because they are not subject to reasonable dispute since they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Moreover, this Court may take judicial notice of public records without converting a motion to dismiss into a motion for summary judgment.” *Nunn v. Perry*, 2015 WL 11090928, at *1 (E.D.N.C. 2015) (citing *Philips v. Pitt Cnty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)).

WHEREFORE, for all of the above reasons and those set forth in the Memorandum of Law in Support of Defendant’s Motion to Dismiss, Defendant Mythical Entertainment respectfully requests that the Court dismiss Plaintiffs’ Complaint.

¹ Hyperlink removed.

² Hyperlink removed.

Respectfully submitted this the 3rd day of December, 2019.

/s/ Christopher M. Thomas

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N.C. Bar No. 31834

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **DEFENDANT MYTHICAL ENTERTAINMENT'S MOTION TO DISMISS** was electronically filed on this day with the Clerk of Court using the CM/ECF system which will automatically send notice of the same addressed to the following:

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This 3rd day of December, 2019.

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